

Amendments to Senate Bill No. 351
1st Reading Copy

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
February 20, 2009 (7:28am)

1. Title, page 1, line 8.
Following: "ORIGINATORS;"
Insert: "PROVIDING FOR A REGISTERED AGENT FOR MORTGAGE BROKERS
AND MORTGAGE LENDERS WITHOUT AN IN-STATE OFFICE;"
2. Title, page 1, line 10.
Following: "32-9-121,"
Insert: "32-9-122,"
3. Page 2, line 10.
Following: "mortgage broker"
Insert: ", mortgage lender,"
4. Page 2, line 22.
Following: "registry"
Strike: "and recognized" through "department"
5. Page 2, line 23.
Strike: "department"
Insert: "nationwide mortgage licensing system and registry"
6. Page 2, line 28.
Following: "mortgage broker"
Insert: "or mortgage lender"
7. Page 3, line 4.
Strike: "in this state"
8. Page 3, line 5.
Following: "proprietorship,"
Insert: "or a mortgage lender"
9. Page 3, line 7.
Following: "broker"
Insert: "if the mortgage broker entity or the mortgage lender
engages in the origination of residential mortgage loans"

10. Page 3, line 9.

Following: "broker"

Insert: ", mortgage lender, or mortgage loan originator"

11. Page 4, line 10.

Following: "state,"

Strike: "that"

Insert: "who is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry and does any of the following:

(i) "

Following: "loan"

Strike: ","

Insert: ";

(ii) "

12. Page 4, line 12 through line 13.

Following: "applicant." on line 12

Insert: "(b) "

Following: "lender" on line 12

Strike: "may" on line 12 through "license" on line 13

Insert: "who also performs the activities of a mortgage broker must be licensed as a mortgage broker, as provided in [section 7], and be registered with and maintain a unique identifier through the nationwide mortgage licensing system and registry"

Renumber: subsequent subsection

13. Page 4, line 19.

Following: "broker"

Insert: "or a mortgage lender"

14. Page 4.

Following: line 22

Insert: "(21) "Mortgage servicer loss mitigation specialist" means a person who on behalf of the person making the residential mortgage loan works with a borrower who is in default or in a foreseeable likelihood of a default to modify or refinance either temporarily or permanently the borrower's obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process."

Renumber: subsequent subsections

15. Page 4, line 25.

Following: "registration of"

Insert: "persons that originate residential mortgage loans,
including state-licensed"

Following: "mortgage brokers,"

Insert: "state-licensed mortgage lenders, state-licensed"

16. Page 5, line 5.

Following: "or gain;"

Strike: "or"

Insert: "and"

17. Page 5, line 11 through line 15.

Following: "include" on line 11

Strike: ":" on line 11 through "(i)" on line 12

Following: "underwriter" on line 12

Strike: ";or" on line 12 through "originator" on line 15

18. Page 6.

Following: line 10

Insert: "(29) "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary."

Renumber: subsequent subsections

19. Page 6, line 12.

Following: "mortgage broker"

Insert: "or the mortgage lender"

20. Page 7.

Following: line 7

Insert: "(a) agencies of the United States government and agencies of this state and its political subdivisions;

(b) a person licensed or chartered under the laws of the United States or of any state as a bank, savings and loan association, credit union, or industrial loan company, which may be referenced under this section as any of the following:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency;
or

(iii) an institution regulated by the farm credit administration;"

Renumber: subsequent subsections

21. Page 7, line 9.

Strike: "32-9-103(26)(a)(i) through (26)(a)(iii)"

Insert: "32-9-103(27)(a)(i) through (27)(a)(iii)"

22. Page 7.

Following: line 11

Insert: "(d) a person employed by or that works as an independent contractor for a licensee under this part to perform only administrative or clerical tasks as a loan processor or underwriter on behalf of the licensee and who does not solicit borrowers or negotiate the terms of loans on behalf of the licensee;"

Renumber: subsequent subsections

23. Page 7, line 13.

Following: "member"

Insert: "of that individual"

24. Page 7, line 14 through line 15.

Strike: subsection (c) in its entirety

Insert: "(f) a person who offers, negotiates, or provides financing in conjunction with the sale of real property owned by that person and that is secured by a contract for deed, mortgage, deed of trust, or other equivalent security interest on the real property sold;

(g) a loan that is made by a person to an employee of that person if the proceeds of the loan are used to assist the employee in meeting the employee's housing needs;

(h) a person engaged solely in nonresidential or commercial real estate lending;

(i) a person qualified as a pension plan under 26 U.S.C. 401 if the plan makes residential mortgages only to the plan's participants;

(j) the federal national mortgage association, the federal home loan mortgage corporation, and the government national mortgage association;

(k) a 501(c)(3) corporation, which is not otherwise engaged in or holding itself out to the public as being engaged in the mortgage loan business, that makes mortgage loans to promote home ownership or improvements for bona fide low-income individuals;

(l) a person that performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301 unless the person is compensated by a mortgage lender, a mortgage

broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator;"

Renumber: subsequent subsections

25. Page 7, line 19.

Strike: "._"

Insert: "; or"

26. Page 7.

Following: line 19

Insert: "(n) a licensed certified public accountant or a licensed public accountant who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to providing public accounting services to the client unless the accountant is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator.

(2) The department may exempt from this part mortgage servicer loss mitigation specialists if the department determines that an exemption of a mortgage servicer loss mitigation specialist is not in violation of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act, Public Law 110-289."

Renumber: subsequent subsection

27. Page 7, line 27.

Following: "engage in"

Strike: "the"

Insert: "residential mortgage loan originator"

28. Page 7, line 28.

Strike: "of a loan processor or underwriter"

Following: "licensed"

Insert: "as a mortgage broker or a mortgage loan originator"

29. Page 7, line 29.

Following: "licensed as"

Insert: "a mortgage broker or a"

30. Page 8.

Following: line 10

Insert: "NEW SECTION. Section 7. Dual licensure. A mortgage lender that also brokers residential mortgage loans must also be licensed as a mortgage broker upon meeting the qualifications for a mortgage broker license."

Renumber: subsequent sections

31. Page 10, line 20.

Strike: "and"

32. Page 10, line 22.

Strike: "."

Insert: "; and"

33. Page 10.

Following: line 22

Insert: "(i) evidence that the applicant has registered with the nationwide mortgage licensing system and registry and obtained a unique identifier."

34. Page 11.

Following: line 4

Insert: "(3) The department shall issue a mortgage broker license to an applicant that has met all the requirements of this section, has paid the fee required under 32-9-117, and is not determined ineligible under [section 17]."

35. Page 11, line 15.

Following: "bond"

Strike: ", irrevocable letter of credit,"

36. Page 11.

Following: line 16

Insert: "(ii) evidence that the applicant has registered with the nationwide mortgage licensing system and registry and obtained a unique identifier;"

Renumber: subsequent subsections

37. Page 12, line 4 through line 5.

Strike: subsection (6) in its entirety

Insert: "(6) The department shall investigate each applicant. The investigation must include a criminal records check based on the fingerprints of the applicant and a civil records check. The department shall require each applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential and the department may use the

records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation.

(7) The department shall issue a mortgage lender license to an applicant that has met all the requirements of this section, has paid the fee required under 32-9-117, and is not determined ineligible under [section 17]."

Renumber: subsequent subsection

38. Page 12, line 7.

Strike: "a single application fee as set forth"

Insert: "payment of the fees as provided"

39. Page 12.

Following: line 15

Insert: "(d) evidence that the applicant has registered with the nationwide mortgage licensing system and registry and obtained a unique identifier;"

Renumber: subsequent subsections

40. Page 13.

Following: line 6

Insert: "(3) The department shall issue a mortgage loan originator license to an applicant that has met all the requirements of this section, has paid the fee required under 32-9-117, and is not determined ineligible under [section 17]."

Renumber: subsequent subsections

41. Page 13, line 7.

Following: "broker"

Insert: "or an employing mortgage lender"

42. Page 13, line 9.

Following: "broker"

Insert: "or employing mortgage lender"

Following: "at the"

Strike: "mortgage broker's"

Insert: "employing licensee's"

43. Page 13, line 12.

Following: "broker"

Insert: "or the mortgage lender"

44. Page 13, line 17.

Following: "broker"

Insert: "or mortgage lender"

45. Page 13, line 25.

Following: "\$500"

Insert: "and an additional application fee of \$250 for any branch location"

46. Page 13, line 26.

Strike: "\$400"

Insert: "\$450"

47. Page 14, line 3.

Strike: "only one"

Insert: "a"

Following: "fee of"

Insert: "\$500 for a mortgage broker and"

Following: "\$750"

Insert: "for a mortgage lender"

48. Page 14, line 17.

Following: "months."

Insert: "An application for renewal also must demonstrate that the licensee continues to meet the standards for licensure under this part."

49. Page 14, line 20.

Following: "broker"

Insert: ", mortgage lender,"

50. Page 14, line 24.

Following: "brokers"

Insert: ", mortgage lenders,"

51. Page 14, line 25.

Following: "standards"

Insert: "-- renewals"

52. Page 14, line 26.

Following: "broker"

Strike: "or"

Insert: ", a mortgage lender, or a"

53. Page 14, line 28.

Following: "furnish"

Insert: "information concerning the applicant"

54. Page 14, line 29.

Following: "registry"

Insert: "regarding"

55. Page 14, line 30 through page 15, line 2.

Strike: subsection (a) in its entirety

Insert: "(a) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive information to allow a supplemental criminal history background check at the state, federal, and international levels;

(b) legal name, birth date, and social security number; and"

Renumber: subsequent subsection

56. Page 16, line 3.

Strike: "examination and"

57. Page 16, line 21.

Following: "demonstrate"

Strike: "at least one of"

58. Page 16, line 23.

Following: "application;"

Insert: "or"

59. Page 16, line 24 through line 25.

Strike: subsection (ii) in its entirety

60. Page 17, line 26.

Strike: "For purposes" through "and to"

Insert: "To"

Following: "for investigation"

Insert: "of any applicant for licensure"

61. Page 17, line 28.

Following: "information"

Insert: "and distributing information to and from any source directed by the department, including the United States department of justice and the federal bureau of investigation"

62. Page 18, line 8.

Strike: "In-state office requirement -- records"

Insert: "Records"

63. Page 18, line 9 through line 11.

Strike: line 9 through line 11

64. Page 18, line 14 through line 15.

Strike: "required materials" on line 14 through ", and the" on line 15

65. Page 18, line 16 through line 17.

Strike: "Licensees" on line 16 through "Montana." on line 17

66. Page 18, line 18.

Following: "broker"

Insert: "or mortgage lender"

67. Page 18, line 19.

Following: "broker"

Insert: "or mortgage lender"

68. Page 18, line 21.

Strike: "televised,"

69. Page 18, line 23.

Strike: ", address,"

Following: "broker"

Insert: ", mortgage lender,"

70. Page 18, line 25.

Strike: ", address,"

71. Page 18, line 26.

Following: "brokers"

Insert: ", mortgage lenders,"

72. Page 18, line 29.

Following: "broker's"

Strike: "or"

Insert: ", a mortgage lender's, or a mortgage"

73. Page 19, line 1.

Insert: "Section 20. Section 32-9-122, MCA, is amended to read:

"32-9-122. Requirement for designated Designated manager and branch license requirements. (1) A mortgage broker or mortgage lender entity shall apply for a license for a main office and for every branch office and shall register with the nationwide mortgage licensing system and registry and maintain a unique identifier.

(1)(2) A mortgage broker that is not a sole proprietorship entity shall designate to the department an individual within its

organization who is located in this state and who is licensed by this state as a mortgage broker to serve as the designated manager of the organization main office and a separate designated manager to serve at each branch location.

(3) A mortgage lender entity shall designate to the department an individual who is licensed as a mortgage broker as the designated manager of the main office and each branch location.

(4) A designated manager must have 3 years of experience as either a mortgage broker, a mortgage loan originator, or a registered loan originator.

(5) A designated manager is responsible for the operation of the business at the location under the designated manager's full charge, supervision, and control.

(6) A mortgage broker or mortgage lender entity is responsible for the conduct of a designated manager or mortgage loan originator while the designated manager or mortgage loan originator is employed by the mortgage broker or mortgage lender entity, including for violations of federal laws that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part.

(7) A designated manager is responsible for conduct that violates federal laws that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part. The designated manager's responsibility includes conduct by the designated manager, each mortgage broker, and each mortgage loan originator employed by the entity while the designated manager is employed at the location that the designated manager manages.

~~(2)~~(8) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker or mortgage lender shall designate another individual licensed as a mortgage broker as designated manager and shall submit information in writing to the department establishing that the subsequent designated manager is in compliance with the provisions of this part.

~~(3)~~(9) If the employment of a designated manager is terminated, the mortgage broker or mortgage lender shall return the designated manager's license to the department within 5 business days of the termination."

{ Internal References to 32-9-122:

32-9-117a }

Insert: "NEW SECTION. Section 21. Registered agent for mortgage broker or mortgage lender licensee without physical office in state -- venue. (1) An applicant for a mortgage lender license under [section 12] who does not maintain a physical office within the state shall file, in a form prescribed by the department, an irrevocable consent appointing the department as the registered agent of the applicant for the purpose of

receiving service of any lawful process in a noncriminal suit, action, or proceeding against the applicant or its successors, executor, or administrator that is based on an alleged violation of this part or any administrative rule adopted pursuant to this part. Service on the department has the same force and validity as if served personally on the applicant or the person filing the consent.

(2) Service must be made by leaving a copy of the process in the office of the department and is effective only if:

(a) notice of the service and a copy of the process are sent by certified mail to the defendant or respondent at the last-known address on file with the department by the plaintiff, which may be the department, in an action, suit, or proceeding; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within a time the court allows.

(3) In a judicial action, suit, or proceeding arising under this part or any administrative rule adopted pursuant to this part between the department and a licensee who does not maintain a physical office in this state, venue must be exclusively in Lewis and Clark County.

(4) A notice, hearing schedule, or order must be mailed to the person or licensee by certified mail at the last-known address for which the license was issued or, in the case of an unlicensed person, at the last-known address of the person."

Renumber: subsequent sections

74. Page 19, line 3.

Strike: "irrevocable letter of credit,"

75. Page 19, line 9 through line 10.

Strike: subsection (b) in its entirety

Renumber: subsequent subsection

76. Page 19, line 11.

Strike: "irrevocable letters of credit or"

77. Page 19, line 14 through line 16.

Following: "maintain" on line 14

Strike: "only"

Following: "bond" on line 14

Strike: "or letter of" on line 14 through "licensure" on line 16

Insert: "for each entity license"

78. Page 19, line 17.

Strike: "or letter of credit"

79. Page 19, line 18.

Following: "for all"

Insert: "persons originating residential loans and for all"

80. Page 19, line 20.

Strike: "per"

Insert: "a"

Following: "year;"

Strike: "or"

81. Page 19, line 21.

Strike: "above"

Insert: "of"

Following: "million"

Strike: "per"

Insert: "but not exceeding \$100 million a"

Following: "year"

Strike: "."

Insert: "; or

(iii) \$100,000 for annual loan production of more than \$100 million a year."

82. Page 19, line 22 through line 24.

Strike: subsection (3) in its entirety

Renumber: subsequent subsections

83. Page 19, line 25 through line 27.

Following: "requirement"

Strike: ", and in" on line 25 through "requirement" on line 27

84. Page 20, line 2.

Strike: "or a mortgage lender"

85. Page 21, line 2.

Following: "broker"

Insert: ", mortgage lender,"

Following: "originator"

Strike: ", conduct"

Insert: "conducts"

86. Page 21, line 12.

Following: "providing"

Insert: "residential"

Following: "mortgage"

Strike: "broker"
Following: "mortgage broker"
Insert: "or mortgage loan originator"

87. Page 22, line 14.
Following: "include the"
Insert: "state license number and the"

88. Page 23, line 2.
Following: "mortgage brokers,"
Insert: "mortgage lenders,"

89. Page 23, line 3 through line 5.
Following: "mortgage broker," on line 3
Insert: "mortgage lender, and"
Following: "originator" on line 3
Strike: ", and" on line 3 through "originator" on line 4
Following: "broker's," on line 4
Insert: "mortgage lender's, or"
Following: "originator's" on line 4
Strike: ", or registered" on line 4 through "originator's" on line 5

90. Page 23, line 9.
Following: "brokers"
Insert: ", mortgage lenders,"

91. Page 23, line 14.
Following: "broker"
Insert: "and mortgage lender"

92. Page 23, line 19.
Following: "brokers"
Insert: ", mortgage lenders,"

93. Page 24, line 6.
Following: "applications;"
Insert: "and"

94. Page 24, line 7 through line 8.
Strike: subsections (e) and (f) in their entirety
Renumber: subsequent subsection

95. Page 24, line 9.
Following: "fees for"
Strike: "testing" through ", and"

96. Page 24, line 12.

Following: "broker"

Insert: "or mortgage lender"

97. Page 24, line 15 through line 16.

Strike: subsection (b) in its entirety

Insert: "(b) The total cost for any investigation or examination must be in accordance with fees determined by the department by rule pursuant to this section and may include expenses for necessary travel outside the state for the purposes of conducting the inspection or examination. The fees set by the department must be commensurate with the cost of the examination or investigation. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of conducting examinations and investigations."

98. Page 24.

Following: line 25

Insert: "(b) To carry out the purposes of this section, the department may:

(i) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce the regulatory burden by sharing resources, adopting standardized or uniform methods or procedures, and sharing documents, records, information, or evidence obtained under this section;

(ii) accept and rely on examination or investigation reports by other government officials, within or outside of this state;

(iii) accept audit reports made by an independent certified public accountant for the licensee or person subject to this part if the examination or investigation covers at least in part the same general subject matter as the audit report and may incorporate the audit report in the report of the examination, report of the investigation, or other writing of department under this part; and

(iv) assess against the licensee or person subject to this part the costs incurred by the department in conducting the investigation or examination."

Renumber: subsequent subsection

99. Page 24, line 26.

Following: "(5)(a)(i)"

Insert: "and [section 30]"

100. Page 24, line 29.

Following: "broker"

Insert: "and mortgage lender"

101. Page 24, line 30.

Following: "employing"

Insert: "mortgage"

Following: "brokers"

Insert: "or employing mortgage lenders"

102. Page 25.

Following: line 5

Insert: "(b) participate in the nationwide mortgage licensing system and registry, including the payment of any associated costs;"

Renumber: subsequent subsections

103. Page 25, line 6.

Following: "broker"

Insert: ", mortgage lender,"

Following: "register with"

Insert: ", pay any required nonrefundable fees to,"

104. Page 25.

Following: line 9

Insert: "(8) (a) The department may, if the U.S. department of housing and urban development determines that a provision of this part does not meet the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, or that additional persons are subject to this part, refrain from enforcing the provision that is determined to be noncompliant and shall by rule invalidate any noncompliant exemption to this part or require that additional persons be temporarily subject to this part to be compliant with federal law, including the provisions for licensure and registration with and maintenance of a valid unique identifier with the nationwide mortgage licensing system and registry.

(b) The department shall propose to the regular session of the legislature that follows the determination by the U.S. department of housing and urban development legislation to address the incompatibility with federal law. The provisions of subsection (8) (a) must be amended in the correcting legislation."

105. Page 25, line 23.

Following: "mortgage broker"

Insert: "or mortgage lender"

Following: "business"

Insert: "or to be employed as a mortgage loan originator"

106. Page 26, line 28.

Following: "Act"

Insert: "of 2008"

107. Page 27, line 13 through line 14.

Strike: "11," on line 13 through "27" on line 14

Insert: "8, 12, 15 through 17, 21, 25 through 27, and 30"

108. Page 27, line 15.

Strike: "11," through "27"

Insert: "8, 12, 15 through 17, 21, 25 through 27, and 30"

109. Page 27, line 17.

Following: "invalid,"

Insert: "including a determination that any part of [this act] is
out of compliance with the Secure and Fair Enforcement for
Mortgage Licensing Act of 2008,"

110. Page 27, line 23.

Strike: "14 and 15"

Insert: "15 and 16"

- END -